

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY MAY 14, 2013

AMENDED IN ASSEMBLY APRIL 30, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 446**

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**Introduced by Assembly Member Mitchell**

February 19, 2013

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An act to amend Sections 120990 and 123148 of, and to add Section 120991 to, the Health and Safety Code, relating to HIV testing.

### LEGISLATIVE COUNSEL'S DIGEST

AB 446, as amended, Mitchell. HIV testing.

Existing law requires a medical care provider, prior to ordering an HIV test, to, among other things, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV, and inform the patient that a person who tests negative for HIV should continue to be routinely tested. Existing law, with specified exceptions, requires a written statement documenting the test subject's informed consent prior to the performance of an HIV test.

This bill would require that the medical care provider or the person who administers the test also provide a patient with information about risk reduction strategies and with specified information after the test results are received. The bill would require informed consent, as specified, either orally or in writing, and would require the person administering the test to record the informed consent in the person's medical record.

This bill would require every patient who has blood drawn at a primary care clinic, as defined, who is between 18 and 65 years of age and who has consented to the test to be offered an HIV test and would specify the manner in which the results of that test are provided.

Existing law regulates the disclosure of test results for HIV and other diseases. Existing law prohibits the disclosure of HIV test results by Internet posting or other electronic means unless the patient requests the disclosure, the healthcare professional deems it appropriate, and the health care professional has first discussed the results in person or over the phone.

This bill would authorize disclosure of HIV test results by Internet posting or other electronic means if the result is posted on a secure Internet Web site and can only be viewed with the use of a secure personal identification number provided to the patient at the time of testing.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 120990 of the Health and Safety Code
- 2 is amended to read:
- 3 120990. (a) Prior to ordering a test that identifies infection of
- 4 a patient with HIV, a medical care provider shall inform the patient
- 5 that the test is planned, provide information about the test, inform
- 6 the patient that there are numerous treatment options and risk
- 7 reduction strategies available for a patient who tests positive for
- 8 HIV, and advise the patient that he or she has the right to decline
- 9 the test. If a patient declines the test, the medical care provider
- 10 shall note that fact in the patient's medical file.
- 11 (b) Subdivision (a) does not apply when a person independently
- 12 requests an HIV test from a medical care provider, a primary care
- 13 clinic as defined in subdivision (a) of Section 1204 or any clinic
- 14 specified in subdivision (g), (h), or (j) of Section 1206, laboratory,
- 15 or HIV counseling and testing site that employs a trained HIV
- 16 counselor pursuant to Section 120917.
- 17 (c) Except as provided in subdivision (a), a person shall not
- 18 administer a test for HIV infection unless the person being tested
- 19 or his or her parent, guardian, conservator, or other person specified
- 20 in Section 121020 has provided informed consent for the

1 performance of the test. Informed consent may be provided orally  
2 or in writing, but the person administering the test shall maintain  
3 documentation of consent, whether obtained orally or in writing,  
4 in the client's medical record. This consent requirement does not  
5 apply to a test performed at an alternative site pursuant to Section  
6 120890 or 120895. This section does not authorize a person to  
7 administer a test for HIV unless that person is otherwise lawfully  
8 permitted to administer an HIV test.

9 (d) Nothing in this section shall preclude a medical examiner  
10 or other physician from ordering or performing a test to detect  
11 HIV on a cadaver when an autopsy is performed or body parts are  
12 donated pursuant to the Uniform Anatomical Gift Act (Chapter  
13 3.5 (commencing with Section 7150) of Part 1 of Division 7).

14 (e) (1) The requirements of subdivision (c) do not apply when  
15 blood is tested as part of a scientific investigation conducted either  
16 by a medical researcher operating under the approval of an  
17 institutional review board or by the department, in accordance with  
18 a protocol for unlinked testing.

19 (2) For purposes of this subdivision, "unlinked testing" means  
20 blood samples that are obtained anonymously, or that have the  
21 name or identifying information of the individual who provided  
22 the sample removed in a manner that prevents the test results from  
23 ever being linked to the particular individual who participated in  
24 the research or study.

25 (f) Nothing in this section permits a person to unlawfully  
26 disclose an individual's HIV status, or to otherwise violate  
27 provisions of Section 54 of the Civil Code, the Americans With  
28 Disabilities Act of 1990 (Public Law 101-336), or the California  
29 Fair Employment and Housing Act (Part 2.8 (commencing with  
30 Section 12900) of Division 3 of Title 2 of the Government Code),  
31 which prohibit discrimination against individuals who are living  
32 with HIV, ~~or~~ who test positive for HIV, or *who* are presumed to  
33 be HIV-positive.

34 (g) After the results of a test performed pursuant to this section  
35 have been received, the medical care provider or the person who  
36 administers the test shall ensure that the patient receives timely  
37 information and counseling, as appropriate, to explain the results  
38 and the implications for the patient's health. If the patient tests  
39 positive for HIV infection, the medical provider or the person who  
40 administers the test shall inform the patient that there are numerous

1 treatment options available and identify followup testing and care  
2 that may be recommended, including contact information for  
3 medical and psychological services. If the patient tests negative  
4 for HIV infection and is known to be at high risk for HIV infection,  
5 the medical provider or the person who administers the test shall  
6 advise the patient of the need for periodic retesting, explain the  
7 limitations of current testing technology and the current window  
8 period for verification of results, and may offer prevention  
9 counseling or a referral to prevention counseling.

10 SEC. 2. Section 120991 is added to the Health and Safety Code,  
11 to read:

12 120991. (a) Each patient who has blood drawn at a primary  
13 care clinic, who is between 18 and 65 years of age, and who has  
14 consented to the HIV test pursuant to Section 120990 shall be  
15 offered an HIV test. The primary care clinic shall be in compliance  
16 with this subdivision if it chooses to test the patient using a rapid  
17 HIV test. This subdivision shall not apply if the primary care clinic  
18 has tested the patient for HIV or if the patient has been offered the  
19 HIV test and declined the test within the previous 12 months. Any  
20 subsequent testing of a patient who has been tested by the primary  
21 care clinic shall be consistent with the most recent guidelines issued  
22 by the federal Centers for Disease Control and Prevention and the  
23 United States Preventive Services Task Force.

24 (b) HIV testing of minors 12 years of age or older shall comply  
25 with Section 6926 of the Family Code.

26 (c) This section shall not prohibit a primary care clinic from  
27 charging a patient to cover the cost of HIV testing. The primary  
28 care clinic shall be deemed to have complied with this section if  
29 an HIV test is offered.

30 (d) A primary care clinic shall attempt to provide test results to  
31 the patient before he or she leaves the facility. If that is not  
32 possible, the facility may inform the patient who tests negative for  
33 HIV by letter or by telephone, and shall inform a patient with a  
34 positive test result in a manner consistent with state law. However,  
35 in any case, the primary care clinic shall comply with subdivision  
36 (g) of Section 120990.

37 (e) For purposes of this section, "primary care clinic" means a  
38 primary care clinic as defined in subdivision (a) of Section 1204  
39 or subdivision (g), (h), or ~~(i)~~ (j) of Section 1206.

1 SEC. 3. Section 123148 of the Health and Safety Code is  
2 amended to read:

3 123148. (a) Notwithstanding any other law, a health care  
4 professional at whose request a test is performed shall provide or  
5 arrange for the provision of the results of a clinical laboratory test  
6 to the patient who is the subject of the test if so requested by the  
7 patient, in oral or written form. The results shall be disclosed in  
8 plain language and in oral or written form, except the results may  
9 be disclosed in electronic form if requested by the patient and if  
10 deemed most appropriate by the health care professional who  
11 requested the test. The telephone shall not be considered an  
12 electronic form of disclosing laboratory results subject to the limits  
13 on electronic disclosure of test results for the purpose of this  
14 section.

15 (b) (1) Consent of the patient to receive his or her laboratory  
16 results by Internet posting or other electronic means shall be  
17 obtained in a manner consistent with the requirements of Section  
18 56.10 or 56.11 of the Civil Code. In the event that a health care  
19 professional arranges for the provision of test results by Internet  
20 posting or other electronic manner, the results shall be disclosed  
21 to a patient in a reasonable time period, but only after the results  
22 have been reviewed by the health care professional. Access to  
23 clinical laboratory test results shall be restricted by the use of a  
24 secure personal identification number when the results are disclosed  
25 to a patient by Internet posting or other electronic manner.

26 (2) Nothing in paragraph (1) shall prohibit direct communication  
27 by Internet posting or the use of other electronic means to disclose  
28 clinical laboratory test results by a treating health care professional  
29 who ordered the test for his or her patient or by a health care  
30 professional acting on behalf of, or with the authorization of, the  
31 treating health care professional who ordered the test.

32 (c) When a patient requests access to his or her laboratory test  
33 results by Internet posting, the health care professional shall advise  
34 the patient of any charges that may be assessed directly to the  
35 patient or insurer for the service and that the patient may call the  
36 health care professional for a more detailed explanation of the  
37 laboratory test results when delivered.

38 (d) The electronic disclosure of test results under this section  
39 shall be in accordance with any applicable federal law governing  
40 privacy and security of electronic personal health records.

1 However, any state statute, ~~if enacted~~, that governs privacy and  
2 security of electronic personal health records, shall apply to test  
3 results under this section and shall prevail over federal law if  
4 federal law permits.

5 (e) The test results to be reported to the patient pursuant to this  
6 section shall be recorded in the patient's medical record, and shall  
7 be reported to the patient within a reasonable time period after the  
8 test results are received at the offices of the health care professional  
9 who requested the test.

10 (f) Notwithstanding subdivision (a), unless the patient requests  
11 the disclosure, the health care professional deems this disclosure  
12 as an appropriate means, and a health care professional has first  
13 discussed in person, by telephone, or by any other means of oral  
14 communication, the test results with the patient, in compliance  
15 with any other applicable laws, none of the following clinical  
16 laboratory test results and any other related results shall be  
17 disclosed to a patient by Internet posting or other electronic means:

18 (1) HIV antibody test, unless the test result is posted on a secure  
19 Internet Web site and can only be viewed with the use of a secure  
20 personal identification number provided to the patient at the time  
21 of testing. The test result shall be posted only if there is no link to  
22 any information that identifies the subject of the test.

23 (2) Presence of antigens indicating a hepatitis infection.

24 (3) Abusing the use of drugs.

25 (4) Test results related to routinely processed tissues, including  
26 skin biopsies, Pap smear tests, products of conception, and bone  
27 marrow aspirations for morphological evaluation, if they reveal a  
28 malignancy.

29 (g) Patient identifiable test results and health information that  
30 have been provided under this section shall not be used for any  
31 commercial purpose without the consent of the patient, obtained  
32 in a manner consistent with the requirements of Section 56.11 of  
33 the Civil Code. In no event shall patient identifiable HIV-related  
34 test results and health information disclosed in this section be used  
35 in violation of subdivision (f) of Section 120980.

36 (h) ~~Any~~ A third party to whom laboratory test results are  
37 disclosed pursuant to this section shall be deemed a provider of  
38 administrative services, as that term is used in paragraph (3) of  
39 subdivision (c) of Section 56.10 of the Civil Code, and shall be  
40 subject to all limitations and penalties applicable to that section.

1 (i) A patient may not be required to pay ~~any~~ a cost, or be charged  
2 ~~any~~ a fee, for electing to receive his or her laboratory results in  
3 ~~any~~ a manner other than by Internet posting or other electronic  
4 form.

5 (j) A patient or his or her physician may revoke ~~any~~ consent  
6 provided under this section at any time and without penalty, except  
7 to the extent that action has been taken in reliance on that consent.

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